A **KHAN BAHADUR AHMED ALLADIN & SONS**

v.

COMMISSIONER OF INCOME-TAX, ANDHRA PRADESH

November 24, 1967

B [J. C. SHAH, V. RAMASWAMI AND V. BHARGAVA, JJ.]

Indian Income-tax Act, 1922, *s.* 2(4)—*Adventure in the nature of trade—What is—Tests to determine—Question is mixed question of law and fact—Tribunal's duty in preparing statement of case.*

The assessee firm purchased a Brengun factory from the Government of India and sold the stores and part of the lands and buildings shortly
C afterwards at a higher price. It admitted before the Income-tax authorities that the purchase and sale in respect of the stores constituted an adventure in the nature of trade, but in respect of the land and buildings sold it contended that they had been purchased by way of investment, and the sale of a part of them did not result in assessable profit. The claim was rejected by the Income-tax Officer, by the Appellate Commissioner, and by the Appellate Tribunal. The High Court in a reference under s. 66(1) also rejected it. The firm appealed to this Court by
D special leave.

HELD : (i) In reaching the conclusion that a transaction is an adventure in the nature of trade, the Appellate Tribunal has to find the primary evidentiary facts and then apply the legal principle involved in the statutory expression "adventure in the nature of trade", used in s. 2(4) of the Indian Income-tax Act. A question of this description is a mixed question of law and fact and the decision of the Appellate
E Tribunal thereon is open to challenge under s. 66(1) of the Act. [442 F—G]

(ii) The question whether the transaction is an adventure in the nature of trade must be decided on a consideration of all the relevant facts and circumstances which are proved in the particular case. The answer to the question does not depend on the application of any abstract rule, principle or formula but must depend upon the total im-
F pression and effect of all the relevant facts and circumstances established in the particular case. [442 H]

(iii) In the present case the appellant firm purchased the Brengun factory from borrowed money. The income from the property was only about 1/6 of the interest payable by the company on the money borrowed. The first sale was effected by the firm within three months of the purchase, and the sums received from sale were utilised for paying off
G the debts as also the dues to the Government. The firm had not enough financial resources to invest the money required to purchase the factory and the transaction could not therefore be with a view to making a permanent investment, but only for making profit. It had not been established by evidence that the appellant firm purchased the Brengun factory for the purpose of establishing a cycle factory. Having regard to the total effect of all the relevant facts and circumstances established in the case it was rightly held by the High Court that the transaction was an adventure in the
H nature of trade and part of a profit making scheme. [448 B—H]

(iv) The statement of case is not intended to be a mere copy of the order sheet in a litigation but it must set out the points raised by the aggrieved party, the reply thereto, if any, and the authorities or statutory

provisions relied upon for the view taken by the Appellate Tribunal together with an intelligible summary of the facts found by the Appellate Tribunal. The Tribunal should clearly state its conclusions and findings of fact and should not leave it to the High Court or this Court to deduce the findings or to collect facts from a large number of documents which are part of the record of the case. [449 A—D] A

Vankataswami Naidu & Co. v. *Commissioner of Income-tax*, 35 I.T.R. 594, *Californian Copper Syndicate* v. *Harris*, 5 T.C. 159, *Martin* v. *Lowry*, 11 T.C. 297, *Rutledge* v. *Commissioners of Inland Revenue*, 14 Tax Cases 490, *Commissioners of Inland Revenue* v. *Fraser, the assessee*, 24 Tax Cases 498, *Leeming* v. *Jones*, 15 Tax Cases 333, *Saroj Kumar Mazumdar* v. *Commissioner Income-tax, West Bengal*, 37 I.T.R. 242 and *Commissioners of Inland Revenue* v. *Reinhold*, 34 Tax Cases 389, referred to. B

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 708 to 710 of 1966. C

Appeals by special leave from the judgment and order dated July 23, 1964 of the Andhra Pradesh High Court in Case Referred No. 42 of 1962.

Sukumar Mitra, Y. V. Anjaneyulu, Bhuvnesh Kumari, J. B. Dadachanji and *O. C. Mathur*, for the appellant (in all the appeals). D

Niren De, Solicitor-General, S. K. Aiyar, R. N. Sachthey and *S. P. Nayar*, for the respondent (in all the appeals).

The Judgment of the Court was delivered by E

Ramaswami, J. These appeals are brought by special leave from the judgment of the High Court of Andhra Pradesh dated 23rd July, 1964 in referred case No. 42 of 1962.

The assessment years involved in these appeals are 1358 F., 1953-54 and 1954-55, the relevant accounting periods being the years ending 30-9-1948, 30-9-1952 and 30-9-1953, respectively. The assessee firm Khan Bahadur Ahmed Alladin & Sons (hereinafter referred to as the 'assessee firm') consists of three partners, Khan Bahadur Ahmed Alladin, and his two sons, Khan Saheb Dost Mohammed Alladin and Noor Mohammed Alladin. The assessee firm purchased the Brengun Factory and the properties attached to it consisting of 403 acres of land, 14 factory buildings, about one hundred residential quarters, and railway sidings, furnitures etc., in addition to the stores, from the Government of India. The price of the Brengun Factory and the properties together with the furniture etc. was fixed at Rs. 27 lakhs while the price of the stores was fixed at Rs. 8 lakhs. During the relevant accounting years, the assessee firm sold a part of the stores for Rs. 9,53,918 O.S. and 46 acres of land, 14 factory buildings, furniture, railway siding, etc. for Rs. 26,48,215 O.S. It was not disputed that the excess over the price realised for the re-sale of F G H

A stores was Rs. 2,26,484 O.S. and for the re-sale of part of the factory land, building etc. was Rs. 10,46,834 O.S. It was admitted by the assessee firm before the Appellate Tribunal that the surplus realised by the resale of stores was not a capital accretion but an adventure in the nature of trade. With regard to the factory it was argued that it was an investment, and not an adven-
B ture in the nature of trade and as such the excess amount realised represented a realisation of capital asset. The contention of the assessee firm was rejected by the Income-tax Officer, by the Appellate Assistant Commissioner and by the Appellate Tribunal in appeal. The view taken by the Appellate Tribunal was that the assessee firm had planned a well calculated scheme of profit
C making, that it had the intention of exploiting the properties which it had purchased to its advantage, that the transactions in question constitute an adventure in the nature of trade, and any surplus which it got by sale of the portions of the properties was liable to tax. At the instance of the assessee firm, the Appellate Tribunal stated a case to the High Court on the following question of law :

D

> "Whether the purchase of the site and buildings known as "Brengun Factory" was in the course of a profit-making scheme or an adventure in the nature of trade ?"

By its judgment dated 23rd July, 1964 the High Court answered
E the question against the assessee firm.

On behalf of the appellant Mr. Sukumar Mitra argued that the assessee firm along with Abdullah Alladin, brother of Khan Bahadur Ahmed Alladdin had been carrying on business as a partnership firm under the name of Khan Bahadur Ahmed Alladdin and Company (hereinafter referred to Alladdin & Co.).
F It had substantial interest in various joint stock companies, and was the managing agent of several joint stock companies, and possessed considerable financial resources. The assessee firm acquired the Brengun Factory with the intention of starting a bicycle factory or some other industry as an investment, but not with the intention of resale. The argument was stressed that the
G purchase and sale of land and buildings was not in the line of business of the assessee firm. It was stated that the purchase was an isolated transaction and even after the sales, a major portion of the factory remained with the assessee firm. It was contended that the assessee firm had not developed the land or parcelled it out with the view to sell it to purchasers as a residential area, and
H make a profit. The submission made on behalf of the appellant was that the transaction of purchase was in the nature of investment and was not an adventure in the nature of trade and the sales represented the realisations of capital asset.

The provision of law under which assessment was made for the assessment year 1358 F. was section 31(3) of the Hyderabad Income Tax Act (hereinafter referred to as the 'Hyderabad Act') which corresponds to s. 23(3) of the Indian Income Tax Act, 1922 (hereinafter referred to as the 'Indian Act'). The assessments for the subsequent years were made under the Indian Act. The charging section under the Hyderabad Act is s. 3, which corresponds to s. 4 of the Indian Act. The word "business" is defined in s. 3(1) of the Hyderabad Act which is identical with the language of s. 2(4) of the Indian Act. Section 8 of the Hyderabad Act states :—

> "Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to income-tax in the manner hereinafter appearing, namely :—
>
> (iv) Profits and gains of business, profession or vocation".

It corresponds to s. 6 of the Indian Act.

The question whether profit in a transaction is a capital accretion or has arisen out of an adventure in the nature of trade is a mixed question of law and fact. In *Venkataswami Naidu & Co.* v. *Commissioner of Income-tax*(1) it was pointed out by this Court that the expression 'in the nature of trade' in sub-section (4) of section 2 of the Indian Act postulates the existence of certain elements in the adventure which in law would invest it with the character of trade or business : and that a Tribunal while considering the question whether a transaction is or is not an adventure in the nature of trade before arriving at its conclusion on the facts, has to address itself to the legal requirements associated with the concept of trade and business. In other words, in reaching the conclusion that the transaction is an adventure in the nature of trade, the Appellate Tribunal has to find the primary evidentiary facts and then apply the legal principle involved in the statutory expression "adventure in the nature of trade" used by s. 2(4) of the Indian Act. A question of this description is a mixed question of law and fact and the decision of the Appellate Tribunal thereon is open to challenge under s. 66(1) of the Indian Act.

The question whether the transaction is an adventure in the nature of trade must be decided on a consideration of all the relevant facts and circumstances which are proved in the particular case. The answer to the question does not depend upon the application of any abstract rule, principle or formula but must

(1) 35 I.T.R. 594.

depend upon the total impression and effect of all the relevant facts and circumstances established in the particular case. In *Californian Copper Syndicate* v. *Harris*(1), Lord Justice Clerk observed, "It is quite a well settled principle in dealing with questions of assessment of income-tax that where the owner of an ordinary investment chooses to realise it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit.....assessable to income-tax. But it is equally well established that enhanced values obtained from realisation or conversion of securities may be so assessable where what is done is not merely a realisation or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business.....What is the line which separates the two classes of cases may be difficult to define, and each case must be considered according to its facts; the question to be determined being—Is the sum of gain that has been made a mere enhancement of value by realising a security or is it a gain made in the operation of business in carrying out a scheme for profit making?" But in judging the character of such transactions several factors have been treated as significant in decided cases. For instance, if a transaction is related to the business which is normally carried on by the assessee, though not directly part of it, an intention to launch upon an adventure in the nature of trade may readily be inferred. A similar inference would arise where a commodity is purchased and sub-divided, altered, treated or repaired and sold or is converted into a different commodity and then sold. The magnitude of the transaction of purchase, the nature of the commodity, the subsequent dealings of the assessee the nature of the organisation employed by the assessee and the manner of disposal may be such that the transaction may be stamped with the character of a trading venture In *Martin* v. *Lowry*(2) the assessee purchased a large quantity of aeroplane linen and sold it in different lots, and for the purpose of selling it started an advertising campaign, rented offices, engaged an advertising manager, a linen expert and a staff of clerks, maintained account books normally used by a trader, and passed receipts and payment in connection with the linen through a separate banking account. It was held that the assessee carried an adventure in the nature of trade and so the profit was liable to be taxed. The same view was taken in *Rutledge v. Commissioners of Inland Revenue*(3) in regard to an assessee who purchased very cheaply a vast quantity of toilet paper and within a short time thereafter sold the whole consignment at a considerable profit. Similarly, in *Commissioners of Inland Revenue v. Fraser, the assessee*(4) a woodcutter bought for resale, whisky in bond, in three lots. He

(1) 5 T.C. 159, 165-6.
(2) 11 Tax Cases 297.
(3) 14 Tax Cases 490.
(4) 24 Tax Cases 498.

sold it later on at considerable profit. The assessee had never dealt in whisky before, he had no special knowledge of the trade, he did not take delivery of the whisky nor did he have it blended and advertised. Even so it was held that the transaction was not an adventure in the nature of trade. Lord President Normend observed in the course of the judgment : "It is in general more easy to hold that a single transaction entered into by an individual in the line of his own trade (although not part and parcel of his ordinary business) is an adventure in the nature of trade than to hold that a transaction entered into by an individual outside the line of his own trade or occupation is an adventure in the nature of trade. But what is a good deal more important is the nature of the transaction with reference to the commodity dealt in. The individual who enters into a purchase of an article or commodity may have in view the resale of it at a profit, and yet it may be that that is not the only purpose for which he purchased the article or the commodity, nor the only purpose to which he might turn it if favourable opportunity of sale does not occur. In some of the cases the purchase of a picture has been given as an illustration. An amateur may purchase a picture with a view to its resale at a profit, and yet he may recognise at the time or afterwards that the possession of the picture will give him aesthetic enjoyment if he is unable ultimately, or at his chosen time, to realise it at a profit. A man may purchase stocks and shares with a view to selling them at an early date at a profit but, if he does so, he is purchasing something which is itself an investment, a potential source of revenue to him while he holds it. A man may purchase land with a view to realising it at a profit, but it also may yield him an income while he continues to hold it. If he continues to hold it, there may be also a certain pride of possession. But the purchaser of a large quantity of commodity like whisky, greatly in excess of what could be used by himself, his family and friends a commodity which yields no pride of possession, which cannot be turned to account except by a process of realisation, I can scarcely consider to be other than an adventurer in a transaction in the nature of a trade; and I can find no single fact among those stated by the Commissioners which in any way traverses that view. In my opinion, the fact that the transaction was not in the way of business (whatever it was) of the respondent in no way alters the character which almost necessarily belongs to a transaction like this".

These are cases of commercial commodities but a transaction of purchase of land cannot be assumed without more to be an adventure in the nature of trade. In *Leeming* v. *Jones*(1) syndicate was formed to acquire an option over a rubber estate with a view to resell it at a profit, and finding the estate too small the

(1) 15 Tax Cases 333.

A syndicate acquired another estate and sold the two estates on profit. It was held that the transaction was not in the nature of trade and the profit was not liable to be assessed to tax. The same view was expressed in *Saroj Kumar Mazumdar* v. *Commissioner of Income-tax West Bengal*(1), in which the assessee who carried on business of engineering works purchased land which B was under requisition by the Government, negotiated a sale before the land was de-requisitioned and sold it after the land was released. Again in *Commissioners of Inland Revenue* v. *Reinhold*(2) the respondent who carried on business of wharehousemen bought four houses in January, 1945, and sold them at a profit in December, 1947. He admitted that he had bought the property with a view to resale and had instructed his agents to C sell whenever a suitable opportunity arose. On behalf of the Crown it was contended that the purchase and sale constituted an adventure in the nature of trade and the profits arising therefrom were chargeable to income tax. It was held by the Court of Sessions that the initial intention of the respondent to purchase the property with a view to resell did not *per se* establish that the D transaction was an adventure in the nature of trade and the Commissioners were justified in treating the profit as not assessable to income tax. But the circumstance of a particular case may lead to the conclusion that the purchase or resale of land is in the nature of trade. In *Venkataswami Naidu's*(3) case the appellant firm which acted as managing agents purchased, for a total E consideration of Rs. 8,713 four contiguous plots of land adjacent to the place where the mills of the company managed by it were situated. The first purchase was made in October, 1941 and the second and subsequent purchases were made in November, 1941, June, 1942 and November, 1942. As long as the appellant was in possession of the land it made no effort to cultivate it or erect any superstructure on it but allowed the land F to remain unutilised except for the rent received from the house which existed on one of the plots. The appellant sold the land to the company managed by it in two lots in September and November, 1947, for a total consideration of Rs. 52,600. The question was whether the sum of Rs. 43,887 being the excess realised by the appellant by the two sales over its purchase price G was assessable to income tax. The Appellate Tribunal rejected the contention of the appellant that the properties were bought as an investment and that the plots were acquired for building tenements for the labourers of the mills but came to the conclusion that the transaction was an adventure in the nature of trade. On a reference, the High Court expressed the same view. It was H held by this Court in appeal that the Appellate Tribunal was right in inferring that the appellant knew that it would be able

(1) 37 Tax Cases 242 (2) 34 Tax Cases 389.

(3) 35 I.T.R. 594.

to sell the lands to the managed company whenever it thought it profitable so to do, that the appellant purchased the four plots of land with the sole intention of selling them to the mills at a profit and that the High Court was right in holding that the transaction was an adventure in the nature of trade.

As we have already said it is not possible to evolve any legal test or formula which can be applied in determining whether a transaction is an adventure in the nature of trade or not. The answer to the question must necessarily depend in each case on the total impression and effect of all the relevant factors and circumstances proved therein and which determine the character of the transaction. What then are the material facts found in the present case ?

Alladin & Co. was the managing agent of several joint stock companies *viz.*, Hyderabad Asbestos Cement Products Limited (hereinafter referred to as the Asbestos Co.), Hyderabad Laminated Products Limited (hereinafter referred to as the Laminated Products), Hyderabad Allwyn Metal Works Limited (hereinafter referred to as the Allwyn Co.) and others. Alladdin & Co. started Asbestos Co. in 1946 and the Laminated Products in 1947. The Government of Hyderabad had 50% share holding in both these companies. Negotiations for the purchase of Brengun Factory situate in the out-skirts of Hyderabad commenced in December, 1946. On 18th December, 1946, there took place a meeting between Khan Saheb Dost Mohammed Alladin and Noor Mohammed Alladin on behalf of Alladin & Co. and Khan Bahadur Obaidullah, the then Additional Financial Adviser to the Government of India. The latter informed the two Alladin brothers that the Government of India had decided to sell the Brengun Factory as the war had ended and it was going cheap. It was agreed that the price of the factory building should be fixed at Rs. 27 lakhs, and of the stores at Rs. 9 lakhs. Alladdin & Co. asked for six months' time for making the payment but finally it was agreed that the price should be paid in four equal monthly instalments commencing from 1st January, 1947. The contract of sale was made subject to the condition that the Hyderabad Government was no longer interested in the factory and also subject to the confirmation by the Board of Directors. By its letter dated December 24, 1946, Alladdin & Co. accepted the proposal and informed the Additional Financial Adviser that the Board had agreed to purchase the Brengun Factory and the first payment would be made on 1st or 2nd January, 1947. Not having ready cash to pay the first instalment the firm borrowed the sum from the State Bank and the Central Bank pledging the shares of the partners valued at about Rs. 20 lakhs for Rs. 9 lakhs. It is significant that the assessee firm invested very little of its own money in the purchase of the factory and the stores. It got six months

A time from the Government of India to pay the price in instalments, and paid it by pledging its shares with the Banks, by obtaining further loan from the Banks on over drafts, and by selling portions of the factory to the Asbestos Co. and Laminated Products, and the Allwyn Co. The balance sheet of the assessee firm as on 31-9-1948 disclosed that the assessee firm owed about Rs. 7 B lakhs to Government of India, though by that time it had sold properties valued over Rs. 30 lakhs. It is a significant circumstance that on 23rd December, 1946 a meeting of the Board of Directors of the Asbestos Co. was held and in that meeting a resolution was passed that the Government should be approached in the matter of the valuation of the site and building in the estab- C lishment of the "Asbestos Works" in the premises of the Brengun Factory purchased by the assessee firm and that the managing agents be authorised to address Nawab Medhi Nawaz Jung Bahadur in that behalf. The notice convening the meeting was issued on the 23rd December, 1946, on which date the assessee firm had not even intimated their acceptance of offer made by the Govern- D ment of India for the sale of Brengun Factory. Pursuant to the resolution of 28th December, 1946, the Asbestos Co. resolved to purchase 14 acres of land, buildings etc. for Rs. 5 lakhs. It should be noticed that the valuation by the P.W.D. which was considered necessary on the 28th December, 1946 was given up and the price of Rs. 5 lakhs was accepted by the Board of Directors. In the circumstances, the inference that that resolution was passed at the E instance of the assessee firm is not unreasonable. Pursuant to the resolution a sale-deed appears to have been executed in favour of the Asbestos Company on 31st March, 1947. It is apparent that the interval of time between the purchase of the factory and the sale was about 3 months, and this is hardly consistent with the contention of the assessee firm, that it had purchased the property F as an investment. It is also admitted that the sale-deed in favour of the Asbestos Co. as well as the Laminated Products and Allwyn Co. were executed by the Government of India in their favour direct. The sale was in favour of the Laminated Products pursuant to a resolution passed on 17th September, 1947. On that day the company resolved that in view of the special facilities for G power, water and railway siding at the Alladin Industrial Estate, Sanathnagar, sanction should be accorded for the acquisition of the proposed area of 8 acres of land for the location of the company's factory as per the rate offered to the company *i.e.*, at O.S. Rs. 5,000 per acre and a sum of Rs. 40,000 was agreed to be paid towards the price. A sale-deed was executed pursuant to the resolution in June, 1948. The next transaction relates to the purchase by the H Allwyn Co. The Board of Directors at its meeting on October 29, 1947, resolved to sell away their existing factory buildings at Azamabad to the Nizam's State Railway, and purchase the new factory,

land and buildings as Sanathnagar, for Rs. 25 lakhs. The property purchased consisted of 24 acres of land, factory buildings and furniture, and the sale deed was executed on February 11, 1948. It is manifest that within one year of the purchase of the Brengun Factory, the assessee firm realised Rs. 13,99,753 by the sale of stores and Rs. 33,90,908 by the sale of 46 acres of land and buildings, in all making a profit of Rs. 11,90,661. It appears from the balance sheet as on September 30, 1948 that even after the extended date, it still owed Rs. 7 lakhs to the Government though by that time it had sold over Rs. 30 lakhs worth of property. The assessee firm was thus paying off the dues to the Government and also discharging its debts by selling fractions of the property. In other words, the assessee firm was purchasing, selling and liquidating the loans, which would all show the commercial nature of the transaction. These facts establish that the assessee firm had not enough financial resources to invest Rs. 36 lakhs on the Bren Gun Factory and that the transaction was launched upon with a view to make profit and not as a permanent investment. There is another aspect of the matter to be taken into account. The property income from Bren Gun Factory during the year 1953-54 as would appear from the Assessment Orders of the years, 1953-54, 1954-55 was about Rs. 22,000 I.G. The interest on loans on over-drafts is paid to be 4½ per cent. on 27 lakhs the balance of price payable to the Government, the annual interest would be about Rs. 1,21,500. It is manifest that the assessee firm could not have borrowed the money to purchase the property as an investment when the income was about 1/6 of the interest payable on the amount borrowed. Mr. Sukumar Mitra suggested that the assessee firm intended to develop the Bren Gun Factory as an Industrial Estate and referred to certain correspondence in this connection. But the correspondence does not establish that any of the foreign companies agreed to start a cycle factory of their own or in collaboration with the assessee firm. The correspondence between the parties admittedly ended in February 1946. Mr. Sukumar Mitra also referred to the correspondence between January 8, 1947 to March 10, 1947 but this also does not show that there was any prospect of the assessee firm starting a cycle industry or any other industry either solely or in collaboration with a foreign company.

Having regard to total effect of all the relevant facts and circumstances established in this case we are of the opinion that the High Court was right in its conclusion that the purchase of the site and the buildings of the Bren Gun Factory was an adventure in the nature of trade and was in the course of a profit making scheme and the question was rightly answered by the High Court against the assessee firm.

A We consider it necessary to add that the statement of the case made by the Appellate Tribunal is unsatisfactory and gives no information whatever about the arguments respectively advanced by the parties or the findings recorded by the Appellate Tribunal. The statement of the case is not intended to be mere copy of the order sheet in a litigation but it must set out the points raised by the B aggrieved party, the reply thereto, if any and the authorities or statutory provisions relied upon for the view taken by the Appellate Tribunal together with an intelligible summary of the facts found by the Appellate Tribunal. A statement of the case should fully, clearly and precisely set out all the relevant facts, or if the facts have been fully set out in the judgment of the Tribunal they C may be incorporated in the statement of the case by a reference to particular paragraphs of the judgment in which the facts are so set out. In any event, it is important that the Appellate Tribunal should state clearly its conclusions and findings of fact and should not leave it to the High Court or this Court to deduce the findings or to collect the facts from a large number of documents which are part of the record of the case. A statement of the case which D does not set out precisely the findings of the Appellate Tribunal on the questions of law and fact serves no useful purpose. It merely gives an opportunity to the parties to put forward arguments at the stage of reference which are often untenable.

For the reasons already expressed we hold that these appeals E must be dismissed with costs. There will be one hearing fee.

G.C *Appeals dismissed.*